Douglas S. Eakeley
Gavin J. Rooney
LOWENSTEIN SANDLER, PC
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500

Attorneys for Defendants

[Additional Counsel on Signature Page]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DOCUMENT FILED ELECTRONICALLY

IN RE SCHERING-PLOUGH CORPORATION ERISA LITIGATION	**Civil Action No.: 03-1204 (KSH)**

Defendants Schering-Plough Corporation ("Schering"), Richard Kogan, Regina Herzlinger, Eugene McGrath, Donald Miller, Carl Mundy, James Wood, Patricia Russo, David Komansky, Kathryn Turner, Schering-Plough Employee Benefits Committee, John Ryan, Vincent Sweeney, Schering-Plough Employee Benefits Investment Committee, E. Kevin Moore, Jack Wyszomierski, and Joseph LaRosa (collectively, "Defendants"), by their undersigned attorneys, answer Plaintiff's First Amended Consolidated Complaint for Breach of Fiduciary Duty Under ERISA ("Complaint") as follows[1]:

---

[1] Plaintiffs filed their Complaint on March 30, 2006. (Dkt. 54.) Defendants timely answered Counts I, II, and IV, and timely moved to dismiss Count III. (Dkts. 55, 57.) On October 12, 2006, former named Plaintiffs Jingdong Zhu and Adrian Fields dismissed their claims against all Defendants, leaving Michele Wendel as the only remaining named Plaintiff in this action. (Dkt. 73.) On August 15, 2007, the Court denied Defendants' motion to dismiss (continued…)

AS TO NATURE OF THE ACTION

1. Defendants admit that Plaintiff styles her action as a putative class action brought pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132. Defendants further admit that the Schering-Plough Corporation Employees' Savings Plan ("Plan") is an eligible individual account plan established and sponsored by Schering under ERISA as a benefit for its employees. Defendants otherwise deny the allegations in Paragraph 1, including the allegations in footnote 1.

2. To the extent that the first and second sentences of Paragraph 2 purport to summarize ERISA and the Internal Revenue Code, and Defendants respectfully refer the Court to the text of the statutes for a full and accurate statement of their provisions. With regard to the allegations in the third sentence of Paragraph 2, Defendants admit that the Plan offers participants the opportunity to invest their individual Plan accounts in a variety of diversified investment alternatives, including mutual funds and the Schering-Plough Stock Fund ("Company Stock Fund"). Defendants otherwise deny the allegations in Paragraph 2.

3. Defendants admit that named Plaintiff Michele Wendel was a Schering employee and was a participant in the Plan. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 3. The allegations in the third sentence of Paragraph 3 purport to summarize and characterize the nature of Plaintiff's claims, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in the third sentence of Paragraph 3. Defendants otherwise deny the allegations in Paragraph 3.

Count III. (Dkt. 89.) Defendants submit this amended Answer to respond to the allegations in Count III, and to reflect the dismissal of former Plaintiffs Zhu and Fields from this action.

4. Defendants deny the allegations in Paragraph 4.

5. The allegations in Paragraph 5 purport to summarize and characterize allegations in Count I of Plaintiff's Complaint, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 5.

6. The allegations in Paragraph 6 purport to summarize and characterize allegations in Count II of Plaintiff's Complaint, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 6.

7. The allegations in Paragraph 7 purport to summarize and characterize allegations in Count III of Plaintiff's Complaint, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 7.

8. The allegations in Paragraph 8 purport to summarize and characterize allegations in Count IV of Plaintiff's Complaint, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 8.

9. The allegations in Paragraph 9 purport to summarize and characterize allegations in Counts I through IV of Plaintiff's Complaint, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 9.

10. The allegations in Paragraph 10 purport to summarize and characterize the nature of Plaintiff's claims, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 10.

11. Defendants deny the allegations in Paragraph 11.

12. The allegations in Paragraph 12 purport to summarize and characterize the nature of Plaintiff's claims, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 12.

AS TO JURISDICTION AND VENUE

13. Defendants admit that the Court has subject matter jurisdiction over this action.

14. Defendants admit that venue is proper in this district. Defendants otherwise deny the allegations in Paragraph 14.

AS TO PARTIES

As To Plaintiffs

15. On October 12, 2006, former Plaintiff Zhu dismissed his claims against all Defendants and is no longer a named plaintiff in this action. (Dkt. 73.) Accordingly, no response is required to the allegations in Paragraph 15. To the extent that a response to Paragraph 15 is required, Defendants admit that former Plaintiff Zhu is a former Schering employee who participated in the Plan during at least part of the period of his Schering employment. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15.

16. On October 12, 2006, former Plaintiff Fields dismissed his claims against all Defendants and is no longer a named plaintiff in this action. (Dkt. 73.) Accordingly, no response is required to the allegations in Paragraph 16. To the extent that a response to Paragraph 16 is required, Defendants admit that former Plaintiff Fields is a former Schering employee who participated in the Plan during at least part of the period of his Schering

employment. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16.

17. Defendants admit that Plaintiff Wendel is a former Schering employee who participated in the Plan during at least part of the period of her Schering employment. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 17.

As To Defendants

As To Schering

18. Defendants admit the allegations in the first sentence of Paragraph 18. The second and third sentences of Paragraph 18 purport to summarize Schering's 2002 10-K submission to the Securities and Exchange Commission ("SEC") and Defendants state that that document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants admit that Schering sells the products identified in the fourth and fifth sentences of Paragraph 18. Defendants otherwise deny the allegations in Paragraph 18.

19. The first and last sentences of Paragraph 19 state legal conclusions to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in the first and last sentences of Paragraph 19. The second sentence and the first clause of the third sentence of Paragraph 19, including footnote 2, purport to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants deny the remaining allegations in Paragraph 19, including footnote 2.

As To Director Defendants

20. Defendants admit that Defendant Richard J. Kogan is Schering's former Chairman, Chief Executive Officer, and President. Defendants otherwise deny the allegations in Paragraph 20.

21. Defendants admit that Defendant Regina E. Herzlinger was a Schering Director and was Chairman of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 21.

22. Defendants admit that Defendant Eugene R. McGrath is a Schering Director and was a member of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 22.

23. Defendants admit that Defendant Donald L. Miller was a Schering Director and was a member of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 23.

24. Defendants admit that Defendant General Carl E. Mundy is a Schering Director and was a member of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 24.

25. Defendants admit that Defendant James Wood was a Schering Director and was a member of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 25.

26. Defendants admit that Defendant Patricia F. Russo is a Schering Director and was a member of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 26.

27. Defendants admit that Defendant David H. Komansky was a Schering Director and was a member of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 27.

28. Defendants admit that Defendant Kathryn C. Turner is a Schering Director and was a member of the Schering Board of Directors' Pension Committee. Defendants otherwise deny the allegations in Paragraph 28.

As To Committee Defendants

As To Schering-Plough Employee Benefits Committee

29. The first and second sentences of Paragraph 29, including footnote 3, purport to summarize the Prospectus, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 29, including footnote 3.

30. Defendants admit that Defendant John Ryan was Schering's Senior Vice-President -- Human Resources. The second sentence of Paragraph 30, including footnote 4, purports to summarize a June 13, 2003 submission to the SEC, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 30, including footnote 4.

31. Defendants admit that Defendant Vincent Sweeney is a member of the Schering Employee Benefits Committee. The second sentence of Paragraph 31, including footnote 5, purports to characterize SEC Form 11-K submissions and Form 5500 Department of Labor submissions, and Defendants state that the documents speak for themselves and deny any

allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 31, including footnote 5.

As To Schering-Plough Employee Benefits Investment Committee

32. The first sentence of Paragraph 32 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations inconsistent therewith. Additionally, footnote 6 purports to summarize Schering Corporate Policy and Procedure documents, and Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 32, including footnote 6.

33. Defendants admit that Defendant E. Kevin Moore is Schering's Vice President -- Treasurer. Defendants otherwise deny the allegations in Paragraph 33.

34. Defendants admit that Defendant Jack L. Wyszomierski was Schering's Executive Vice President -- CFO. The second sentence of Paragraph 34 purports to summarize Schering Corporate Policy and Procedure documents, and Defendants state that the documents speak for themselves and deny any allegations inconsistent therewith. Defendants otherwise deny the allegations in Paragraph 34.

35. Defendants admit that Defendant Joseph J. LaRosa was a member of the Schering Employee Benefits Investment Committee. Defendants otherwise deny the allegations in Paragraph 35.

36. Paragraph 36 does not contain any allegation requiring an answer, however, to the extent that a response is required, Defendants deny the allegations in Paragraph 36.

AS TO THE PLAN

As To The Savings Plan

37. Defendants admit the allegations in the first two sentences of Paragraph 37. The third sentence of Paragraph 37 purports to summarize and characterize the nature of Plaintiff's claims, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in the third sentence of Paragraph 37. The fourth sentence of Paragraph 37 seeks to summarize the Schering Savings Plan Benefits Booklet (the "Summary Plan Description," or "SPD"), and Defendants state that the document speaks for itself and deny any allegations inconsistent therewith. Defendants otherwise deny the allegations in Paragraph 37.

38. Defendants admit the allegations in Paragraph 38.

39. Defendants admit that all Schering employees commencing employment on or after January 1, 2000 are eligible to become Plan participants on any date coincident with or following the date they complete one hour of service for Schering-Plough, provided they are then an eligible employee, as defined by the Plan. Defendants otherwise deny the allegations in Paragraph 39.

40. The first sentence of Paragraph 40, including footnote 7, seeks to summarize a 2002 SEC Form 11-K submission, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants admit that the Plan offers participants the opportunity to invest their individual Plan accounts in a variety of diversified investment alternatives, including mutual funds and the Company Stock Fund. Defendants also admit that the Company Stock Fund invests primarily in shares of Schering stock. Defendants further admit that in no event may

Plan participants allocate more than 50 percent of future individual account contributions to investment in the Company Stock Fund, and that in no event may Plan participants reallocate more than 50 percent of the value of their individual accounts to the Company Stock Fund. Defendants otherwise deny the allegations in Paragraph 40, including footnote 7.

41. The allegations in Paragraph 41 purport to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 41.

42. Paragraph 42 purports to summarize a 2004 SEC Form 11-K submission, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Answering further, Defendants admit that the Plan offers participants a variety of diversified investment options, including the investment funds identified in Paragraph 42 and the Company Stock Fund. Defendants otherwise deny the allegations in Paragraph 42.

43. Paragraph 43 purports to summarize 2001 and 2002 SEC Form 11-K submissions, and Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 43.

44. Paragraph 44 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 44.

45. Paragraph 45 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with

the exact language of the document. Answering further, Defendants state that, under the terms of the Plan, the Benefits Committee is responsible for the "general administration of the Plan". Defendants further state that, under the terms of the Plan, the Investment Committee is responsible for "setting and implementing the Plan's investment and funding objectives and policies". Defendants otherwise deny the allegations in Paragraph 45.

46. Paragraph 46 purports to summarize a 2004 SEC Form 11-K submission, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 46.

DEFENDANTS' FIDUCIARY STATUS

As To Schering

47. Defendants deny the allegations in Paragraph 47.

48. Paragraph 48 states a legal conclusion to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 48.

49. The first sentence of Paragraph 49 purports to summarize ERISA Section 402(a)(1), 29 U.S.C. § 1102(a)(1), and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. The second sentence of Paragraph 49 states a legal conclusion to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in the second sentence of Paragraph 49. Defendants otherwise deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50.

51. Paragraph 51 purports to summarize the Plan's Trust Agreement, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 51.

As To Director Defendants

52. Defendants admit that the Director defendants, with the exception of Defendant Kogan, are former members of the Schering Board of Directors' Pension Committee. To the extent that the allegations in Paragraph 52, including footnote 8, purport to summarize Proxy statements or other documents, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 52, including footnote 8.

53. Defendants deny the allegations in Paragraph 53.

As To Committee Defendants

As To Benefits Committee

54. Paragraph 54 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 54.

55. Paragraph 55 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 55.

56. Paragraph 56 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 56.

57. Defendants deny the allegations in Paragraph 57.

As To Investment Committee

58. Paragraph 58 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 58.

59. Paragraph 59, including footnote 9, purports to summarize the Plan and the SPD, and Defendants state that those documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 59, including footnote 9.

60. Paragraph 60 purports to summarize Schering Corporate Policy and Procedure documents, and Defendants state that those documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 60.

61. To the extent that Paragraph 61 seeks to summarize Schering Corporate Policy and Procedure documents, Defendants state that those documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 61.

62. Defendants deny the allegations in Paragraph 62.

63. Paragraph 63 purports to summarize the Plan and ERISA Section 404, 29 U.S.C. § 1104. Defendants state that the Plan speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants respectfully refer the Court to the text of the ERISA statute for a full and accurate statement of its provisions. Defendants otherwise deny the allegations in Paragraph 63.

As To Additional Fiduciary Aspects of Defendants' Actions

64. The first and second sentences of Paragraph 64 purport to summarize ERISA Section 3(21)(A)(I), 29 U.S.C. § 1002(21)(A)(I), and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. Defendants otherwise deny the allegations in Paragraph 64.

65. Paragraph 65 purports to summarize ERISA and cases decided under ERISA, and Defendants respectfully refer the Court to the text of the statute and the cases for a full and accurate statement of their provisions and holdings. Defendants otherwise deny the allegations in Paragraph 65.

66. Defendants deny the allegations in Paragraph 66.

67. Defendants deny the allegations in Paragraph 67.

68. Defendants deny the allegations in Paragraph 68.

69. Defendants deny the allegations in Paragraph 69, except that Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegation in the second sentence of Paragraph 69 that Plan participants relied on the SPD, the Prospectus, or other referenced documents in making investment decisions under the Plan concerning the propriety of including the Company Stock Fund as a part of their retirement investment portfolio.

70. Paragraph 70 purports to summarize the Plan, and Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 70.

71. Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

AS TO CLASS ACTION ALLEGATIONS

73. The allegations in Paragraph 73 purport to summarize and characterize the nature of Plaintiff's claims, and no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 73.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants deny the allegations in Paragraph 75.

76. Defendants deny the allegations in Paragraph 76.

77. Defendants deny the allegations in Paragraph 77, except that Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations regarding the competence and experience of Plaintiff's counsel.

78. Defendants deny the allegations in Paragraph 78.

79. Defendants deny the allegations in Paragraph 79.

AS TO DEFENDANTS' CONDUCT

A. As To Schering Stock Was an Imprudent Investment for the Plan As To Background

80. Defendants admit that Schering is a research-based company engaged in the discovery, development, manufacturing, and marketing of pharmaceutical products. Defendants also admit that Schering's consolidated net sales for 2002 exceeded $10 billion. Defendants further admit that Claritin and Clarinex are products marketed by Schering. Defendants otherwise deny the allegations in Paragraph 80.

81. Defendants admit that Schering is a research-based company engaged in the discovery, development, manufacturing, and marketing of pharmaceutical products. Defendants also admit that Schering's consolidated net sales for 2002 exceeded $10 billion.

Defendants further admit that Claritin and Clarinex are products marketed by Schering. Defendants otherwise deny the allegations in Paragraph 81.

82. Defendants admit that Schering manufactures pharmaceutical products in the United States, and that Schering has facilities in New Jersey and Puerto Rico. The remaining allegations in Paragraph 82 purport to summarize regulations promulgated by the United States Food and Drug Administration ("FDA"), and Defendants respectfully refer the Court to the text of the regulations for a full and accurate statement of their provisions. Defendants otherwise deny the allegations in Paragraph 82.

83. Defendants admit that Claritin is a product marketed by Schering. To the extent that Paragraph 83 purports to summarize a 2003 SEC 10-K annual report, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 83.

84. Defendants admit that Clarinex is a product marketed by Schering, and admit that in October 1999 Schering filed a New Drug Application ("NDA") with the FDA seeking regulatory approval to market Clarinex. Defendants otherwise deny the allegations in Paragraph 84.

85. Defendants deny the allegations in Paragraph 85.

As To Systems Crash

86. Defendants admit that the FDA's Good Manufacturing Practices ("GMP") regulations and policies control the manufacture of drug products. To the extent that the allegations in Paragraph 86 purport to summarize these regulations and policies, Defendants respectfully refer the Court to the text of the regulations and policies for a full and accurate

statement of their provisions. Defendants also admit that the FDA has conducted inspections at Schering facilities in Kenilworth and Union, New Jersey and Manati and Las Piedras, Puerto Rico, and admit that prescription and/or over-the-counter pharmaceutical products are manufactured at these facilities. Defendants otherwise deny the allegations in Paragraph 86.

87. To the extent that the allegations in Paragraph 87 purport to summarize FDA documents, including Warning Letters, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 87.

88. Defendants admit that the FDA conducted inspections of Schering's New Jersey and Puerto Rico manufacturing facilities, and that the FDA issued Warning Letters to Schering dated October 23, 1998, July 21, 1999, and May 8, 2000. To the extent that the allegations in Paragraph 88 purport to summarize the FDA Warning Letters, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 88.

89. Defendants admit that the FDA conducted inspections of Schering's New Jersey and Puerto Rico manufacturing facilities, and that the FDA issued documents to Schering in connection with some of those inspections. To the extent that the allegations in Paragraph 89 purport to summarize these FDA documents, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 89.

90. Paragraph 90 purports to summarize Warning Letters issued to Schering by the FDA, and Defendants state that the documents speak for themselves and deny any

allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 90.

91. Defendants admit that Schering markets the asthma medication Albuterol, including under the brand name Proventil. Defendants further admit that Schering voluntarily recalled certain prescription inhalation aerosol asthma products. To the extent that the allegations in Paragraph 91 purport to summarize Warning Letters issued to Schering by the FDA, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 91.

92. Defendants admit that Schering retained AAC Consulting Group ("AAC") to review various manufacturing facilities, including facilities in New Jersey. Defendants further admit that AAC provided Schering with a confidential report of its review. To the extent that the allegations in Paragraph 92 purport to summarize the AAC report, or any letter or summary attached to the AAC report, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 92.

93. To the extent that the allegations in Paragraph 93 purport to summarize Schering's 10-Q quarterly report for the first fiscal quarter of 2000, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 93.

94. Defendants deny the allegations in Paragraph 94.

As To Clarinex Delayed

95. Defendants state that the FDA's review process for NDAs is set forth in the FDA's regulations, and Defendants state that these regulations speak for themselves and deny any characterizations inconsistent therewith. Furthermore, to the extent that the allegations in Paragraph 95 purport to summarize FDA Compliance Policy Guides or Schering SEC submissions, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 95.

96. Defendants deny the allegations in Paragraph 96.

97. Defendants admit that Schering representatives met with representatives of J.P. Morgan Securities, Inc. in November 2000. Defendants otherwise deny the allegations in Paragraph 97.

98. Defendants admit that Schering issued a press release on or about November 28, 2000. To the extent that the allegations in Paragraph 98 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 98.

99. Defendants admit that Schering issued a press release on or about January 25, 2001. Defendants further admit that Schering received an "approvable" letter from the FDA on or about January 19, 2001. To the extent that the allegations in Paragraph 99 purport to summarize this press release or this "approvable" letter, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 99.

As To Disclosure and Immediate Fallout

100. Defendants admit that Schering issued a press release on or about February 15, 2001. To the extent that the allegations in Paragraph 100 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 100.

101. Defendants admit that Schering issued a press release on or about February 15, 2001. To the extent that the allegations in Paragraph 101 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 101.

102. Defendants admit that Schering issued a press release on or about February 15, 2001. To the extent that the allegations in Paragraph 102 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 102.

103. Defendants admit that Schering issued a press release on or about February 15, 2001. To the extent that the allegations in Paragraph 103 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 103, including footnote 10.

104. Defendants admit that on February 16, 2001, Schering's common stock price declined from $48.32 per share to $41.25 per share. Defendants otherwise deny the allegations in Paragraph 104.

As To The Fallout Continues

105. Defendants deny the allegations in Paragraph 105.

106. Defendants admit that Schering issued a press release on or about May 17, 2002. To the extent that the allegations in Paragraph 106 purports to summarize this press release, or any consent decree referenced in this press release, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 106.

107. Defendants admit that Schering issued a press release on or about May 17, 2002. To the extent that the allegations in Paragraph 107 purports to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 107.

108. Defendants admit that Schering issued a press release on or about May 17, 2002. To the extent that the allegations in Paragraph 108 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 108.

109. Defendants admit that Schering issued a press release on or about May 17, 2002. To the extent that the allegations in Paragraph 109 purport to summarize this press

release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 109.

110. Defendants admit that Schering issued a press release on or about May 17, 2002. To the extent that the allegations in Paragraph 110 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 110.

111. Defendants admit that Schering issued a press release on or about May 17, 2002. To the extent that the allegations in Paragraph 111 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 111.

112. Defendants admit that Fred Hassan succeeded Richard Kogan as Schering's Chairman and CEO. Defendants otherwise deny the allegations in Paragraph 112.

113. To the extent that the allegations in Paragraph 113 purport to summarize Schering's first quarter 2003 financial statements, Defendants state that those statements speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Furthermore, to the extent that the allegations in Paragraph 113 purport to summarize statements attributed to Fred Hassan, Defendants state that those statements speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the statements. Defendants otherwise deny the allegations in Paragraph 113.

114. To the extent that the allegations in Paragraph 114 purport to summarize statements attributed to Schering or to Fred Hassan, Defendants state that those statements speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the statements. Defendants otherwise deny the allegations in Paragraph 114.

115. Defendants deny the allegations in Paragraph 115.

116. Defendants admit that Schering issued a press release on or about May 30, 2003 regarding a federal grand jury investigation. To the extent that the allegations in Paragraph 116 purport to summarize this press release, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Furthermore, to the extent that the allegations in Paragraph 116 purport to summarize federal statutes, Defendants respectfully refer the Court to the text of the statutes for full and accurate statements of their provisions. Defendants otherwise deny the allegations in Paragraph 116.

117. Defendants deny the allegations in Paragraph 117.

118. Defendants admit that in November 2002, Schering was served with two grand jury subpoenas by the United States Attorney for the District of Massachusetts. To the extent that the allegations in Paragraph 118 purport to summarize these subpoenas, Defendants state that the documents speak for themselves and deny any allegations inconsistent therewith. Defendants otherwise deny the allegations in Paragraph 118.

119. Defendants admit that in September 2003, Schering and Richard Kogan settled Regulation FD charges with the SEC without admitting to the charges brought by the SEC. To the extent that the allegations in footnote 11 to Paragraph 119 purport to summarize Regulation FD, Defendants respectfully refer the Court to the text of the regulation for a full and

accurate statement of its provisions. Defendants otherwise deny the allegations in Paragraph 119, including footnote 11.

120. Defendants deny the allegations in Paragraph 120.

121. To the extent that the allegations in Paragraph 121 purport to summarize any announcement by Schering or Moody's Investors Service, Defendants state that these announcements speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the announcements. Defendants otherwise deny the allegations in Paragraph 121.

122. Defendants admit that Schering's common stock price was below $20 per share at some point in June 2003. Defendants are without knowledge or information sufficient to form a belief as to the allegation in the second sentence of Paragraph 122. Defendants deny the allegation in the third sentence of Paragraph 122. To the extent that allegations in the last sentence of Paragraph 122 purport to summarize any Schering press release or other statement, including statements allegedly published in the Wall Street Journal on August 22, 2003, Defendants state that these statements speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the statements. Defendants otherwise deny the allegations in Paragraph 122.

123. Defendants admit that Schering Chairman and CEO Fred Hassan sent a letter to Schering's shareholders on or about August 21, 2003. To the extent that the allegations in Paragraph 123 purport to summarize statements in that letter, or in the August 22, 2003 Wall Street Journal, Defendants state that the documents speak for themselves and deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 123.

124. Defendants deny the allegations in the first sentence of Paragraph 124. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence on Paragraph 124. Defendants otherwise deny the allegations in Paragraph 124.

As To Illegal Kickback Scheme

125. Defendants admit that Schering Sales Corporation is a subsidiary of Schering. Defendants otherwise deny the allegations in Paragraph 125.

126. To the extent that the allegations in Paragraph 126 purport to summarize a press release issued by the United States Department of Justice ("DOJ") on or about July 30, 2004, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 126

127. To the extent that the allegations in Paragraph 127 purport to summarize a press release issued by the DOJ on or about July 30, 2004, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 127.

128. To the extent that the allegations in Paragraph 128 purport to summarize a press release issued by the DOJ on or about July 30, 2004, Defendants state that the document speaks for itself and deny any allegations that characterize or are inconsistent with the exact language of the document. Defendants otherwise deny the allegations in Paragraph 128.

129. Defendants deny the allegations in Paragraph 129.

B. As To Defendants Knew of Should have Known that Schering Stock was not a Prudent Plan Investment.

130. Defendants deny the allegations in Paragraph 130.

131. Defendants deny the allegations in Paragraph 131.

132. Defendants deny the allegations in Paragraph 132

133. Defendants deny the allegations in Paragraph 133.

134. Defendants deny the allegations in Paragraph 134.

135. Plaintiff's Complaint contains two Paragraphs numbered 135. With regard to the first Paragraph 135, Defendants deny the allegations in that Paragraph.

C. As To Defendants Regularly Communicated with Plan Participants Concerning Investment in Schering Stock, the Plan's Single Largest Asset, Yet Failed to Disclose the Imprudence of Investment in Schering Stock.

135. Plaintiff's Complaint contains two Paragraphs numbered 135. With regard to the second Paragraph 135, Defendants deny the allegations in that Paragraph.

136. Defendants deny the allegations in Paragraph 136.

137. Defendants deny the allegations in Paragraph 137.

138. Defendants deny the allegations in Paragraph 138.

D. As To Certain Defendants Suffered From Direct Conflicts of Interest.

139. Defendants deny the allegations in Paragraph 139.

140. Defendants deny the allegations in Paragraph 140.

141. To the extent that the allegations in Paragraph 141 purport to summarize the trading history of the named individuals, Defendants state that the SEC filings regarding the trading history of these individuals speak for themselves and reiterate that they deny any allegations that characterize or are inconsistent with the exact language of the documents. Defendants otherwise deny the allegations in Paragraph 141.

142. Defendants deny the allegations in Paragraph 142.

143. Defendants deny the allegations in Paragraph 143.

AS TO CLAIMS FOR RELIEF UNDER ERISA

144. Paragraph 144 states a legal conclusion to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 144.

145. Paragraph 145 purports to summarize ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. To the extent a response is required, Defendants deny the allegations in Paragraph 145.

146. Paragraph 146 purports to summarize ERISA Section 409(a), 29 U.S.C. § 1109(a), and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. To the extent a response is required, Defendants deny the allegations in Paragraph 146.

147. Paragraph 147 purports to summarize ERISA Section 404, 29 U.S.C. § 1104, and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. To the extent a response is required, Defendants deny the allegations in Paragraph 147.

148. Paragraph 148 purports to summarize ERISA Section 404, 29 U.S.C. § 1104, and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. To the extent a response is required, Defendants deny the allegations in Paragraph 148.

149. The first sentence of Paragraph 149 purports to summarize ERISA Section 405(a), 29 U.S.C. § 1105(a), and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. The second sentence of Paragraph 149 purports to summarize and characterize the nature of Plaintiff's claims, and no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 149.

AS TO COUNT I

150. Defendants repeat their responses to the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

151. Paragraph 151 states legal conclusions to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 151.

152. Defendants deny the allegations in Paragraph 152.

153. To the extent that the allegations in the first and second sentences of Paragraph 153 purport to summarize ERISA, and Defendants respectfully refer to the Court to the text of the statute for a full and accurate statement of its provisions. Defendants otherwise deny the allegations in Paragraph 153

154. Defendants deny the allegations in Paragraph 154.

155. Paragraph 155 purports to summarize ERISA and cases decided under ERISA, and Defendants respectfully refer the Court to the text of the statute and the cases for a full and accurate statement of their provisions and holdings. Paragraph 155 also states legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations in Paragraph 155.

156. Defendants deny the allegations in Paragraph 156.

157. Defendants deny the allegations in Paragraph 157.

158. Defendants deny the allegations in Paragraph 158, including footnote 12.

159. Paragraph 159 states legal conclusions to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 159.

160. Defendants deny the allegations in Paragraph 160.

161. Defendants deny the allegations in Paragraph 161.

162. Defendants deny the allegations in Paragraph 162.

163. Defendants deny the allegations in Paragraph 163.

164. Defendants deny the allegations in Paragraph 164. Answering further, Defendants state that the Company Stock Fund remained a prudent investment for the Plan and its participants throughout the Class Period and state that Defendants did not breach any fiduciary duty owed to the Plan and its participants.

AS TO COUNT II, INCLUDING FOOTNOTE 13

165. Defendants repeat their responses to the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

166. Defendants deny the allegations in Paragraph 166.

167. Defendants deny the allegations in Paragraph 167.

168. Defendants deny the allegations in Paragraph 168.

169. Paragraph 169 states legal conclusions to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 169.

170. Defendants deny the allegations in Paragraph 170.

171. Defendants deny the allegations in Paragraph 171.

172. Defendants deny the allegations in Paragraph 172.

173. Defendants deny the allegations in Paragraph 173.

174. Defendants deny the allegations in Paragraph 174.

175. Defendants deny the allegations in Paragraph 175. Answering further, Defendants state that the Company Stock Fund remained a prudent investment for the Plan and its participants throughout the Class Period and state that Defendants did not breach any fiduciary duty owed to the Plan and its participants.

AS TO COUNT III

176. Defendants repeat their responses to the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

177. Paragraph 177 states legal conclusions to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in Paragraph 177.

178. Defendants deny the allegations in Paragraph 178.

179. Paragraph 179 states legal conclusions to which no response is required; however, to the extent that this paragraph includes any factual allegations, Defendants deny those allegations.

180. Defendants deny the allegations in Paragraph 180.

181. Defendants deny the allegations in Paragraph 181.

182. Defendants deny the allegations in Paragraph 182.

183. Defendants deny the allegations in Paragraph 183.

184. Defendants deny the allegations in Paragraph 184.

185. Defendants deny the allegations in Paragraph 185.

186. Defendants deny the allegations in Paragraph 186.

187. Defendants deny the allegations in Paragraph 187. Answering further, Defendants state that the Company Stock Fund remained a prudent investment for the Plan and its participants throughout the Class Period and state that Defendants did not breach any fiduciary duty owed to the Plan and its participants.

AS TO COUNT IV

188. Plaintiff's Complaint contains two Paragraphs numbered 188. With regard to the first Paragraph 188, Defendants repeat their responses to the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

188. Plaintiff's Complaint contains two Paragraphs numbered 188. With regard to the second Paragraph 188, Defendant state that this Paragraph states legal conclusions to which no response is required; however, to the extent that a response is required, Defendants deny the allegations in the second Paragraph 188.

189. Paragraph 189 purports to summarize ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. To the extent that a response is required, Defendants deny the allegations in Paragraph 189.

190. Defendants deny the allegations in Paragraph 190.

191. Defendants deny the allegations in Paragraph 191.

192. Defendants deny the allegations in Paragraph 192.

193. Defendants deny the allegations in Paragraph 193. Answering further, Defendants state that the Company Stock Fund remained a prudent investment for the Plan and

its participants throughout the Class Period and state that Defendants did not breach any fiduciary duty owed to the Plan and its participants.

AS TO SECTION 404(c) DEFENSE INAPPLICABLE

194. Defendants deny the allegations in Paragraph 194.

195. Defendants deny the allegations in Paragraph 195.

196. Paragraph 196 purports to summarize ERISA Section 404(c), 29 U.S.C. § 1104(c), and regulations promulgated thereunder, and Defendants respectfully refer the Court to the text of the statute and regulations for a full and accurate statement of their provisions. To the extent that a response is required, Defendants deny the allegations in Paragraph 196.

197. Defendants deny the allegations in Paragraph 197.

198. Paragraph 198 purports to summarize regulations promulgated under ERISA Section 404(c), 29 U.S.C. § 1104(c), and cases interpreting those regulations, and Defendants respectfully refer the Court to the text of the regulations and the cases for a full and accurate statement of their provisions and holdings. To the extent that a response is required, Defendants deny the allegations in Paragraph 198

199. Defendants deny the allegations in Paragraph 199.

AS TO CAUSATION

200. Defendants deny the allegations in Paragraph 200.

201. Defendants deny the allegations in Paragraph 201.

202. Defendants deny the allegations in Paragraph 202.

AS TO REMEDY FOR BREACHES OF FIDUCIARY DUTY

203. Defendants deny the allegations in Paragraph 203.

204. Defendants deny the allegations in Paragraph 204.

205. Paragraph 205 purports to summarize ERISA Sections 409 and 502(a)(2), 29 U.S.C. §§ 1109, 1132(a)(2), and Defendants respectfully refer the Court to the text of the statute for a full and accurate statement of its provisions. To the extent that a response is required, Defendants deny the allegations in Paragraph 205.

206. Defendants deny the allegations in Paragraph 206.

207. Defendants deny the allegations in Paragraph 207, and specifically deny that Plaintiff is entitled to any relief whatsoever.

208. Defendants deny the allegations in Paragraph 208.

AS TO PRAYER FOR RELIEF

In response to the "WHEREFORE" clause on page 66 of the Complaint, Defendants deny that Plaintiff is entitled to any relief whatsoever.

AS TO JURY TRIAL

Defendants deny that Plaintiff is entitled to a trial by jury.

Defendants deny each and every allegation of the Complaint not heretofore specifically admitted.

SEPARATE DEFENSES, AFFIRMATIVE OR OTHERWISE

1. Plaintiff's Complaint fails to state any claim upon which relief can be granted.

2. Plaintiff's claims are barred by the doctrines of estoppel, waiver, release, unclean hands, acquiescence, and/or ratification.

3. Some or all of Plaintiff's claims should be dismissed because Plaintiff has failed to exhaust administrative remedies provided by the Plan.

4. Any losses alleged by Plaintiff were not caused by any alleged breach of fiduciary duty by Defendants, but resulted from economic causes and events not related to any alleged breaches of fiduciary duty and from matters over which Defendants had no control.

5. Any losses alleged by Plaintiff were not caused by any fault, act, or omission by the Defendants, but were caused by circumstances, entities, or persons, including Plaintiff, for which Defendants are not responsible and cannot be held liable.

6. In the event that Plaintiff has stated any claim on which relief can be granted, Plaintiff has proximately caused, contributed to, or failed to mitigate any and all losses that she claims.

7. Defendants are exculpated from the liability asserted in the Complaint by ERISA Section 404(a)(2), 29 U.S.C. § 1104(a)(2).

8. Defendants are exculpated from the liability asserted in the Complaint by ERISA Section 404(c), 29 U.S.C. § 1104(c).

9. Plaintiff lacks standing to bring this action on behalf of the Plan.

10. Plaintiff's claimed relief does not constitute "appropriate equitable relief" under ERISA Section 502(a)(3), 29 U.S.C. § 1102(a)(3).

11. Defendants were not performing any fiduciary function under ERISA Section 3(21), 29 U.S.C. § 1002(21), regarding the conduct alleged in the Complaint.

12. The fiduciary conduct alleged in the Complaint was performed by an independent entity for which Defendants are not responsible and cannot be held liable.

13. Some or all of the Defendants owed no fiduciary duty to Plaintiff.

14. Some or all of the Defendants had no duty to monitor Plan fiduciaries.

15. The alleged statements or omissions in the Complaint were not made in an ERISA fiduciary capacity.

16. The alleged statements or omissions in the Complaint are not actionable under ERISA.

17. Defendants are protected from liability by ERISA Section 409(b), 29 U.S.C. § 1109(b), to the extent that the fiduciary breaches alleged in the Complaint occurred before or after they were alleged fiduciaries.

18. Plaintiff's attempt to use ERISA fiduciary duties to expand the disclosure obligations under the federal securities laws and/or to impose liability arising out of disclosures made or disseminated under the federal securities laws is barred by ERISA Section 514(d), 29 U.S.C. § 1144(d).

19. Defendants undertook all reasonable measures to comply, and to ensure future compliance where necessary, with all applicable laws regarding the manufacture of pharmaceutical and other products.

20. Defendants undertook all reasonable measures to comply, and to ensure future compliance where necessary, with the requirements of the FDA's current Good Manufacturing Practices.

21. All of Defendants' statements and actions in connection with the matters alleged in the Complaint were in good faith, without any knowledge of wrongdoing, and without any intention to commit fraud, participate in fraud, or facilitate fraud of any kind.

22. Defendants did not knowingly, intentionally, recklessly, or negligently misrepresent any material facts.

23. Plaintiff and/or some or all of the members of the putative Class did not purchase or sell the Company Stock Fund in reliance on any representation, act, or omission by the Defendants.

24. Plaintiff and/or some or all of the members of the putative Class were not damaged by Defendants' alleged representations, acts, or omissions.

25. The total mix of information available to Plaintiff adequately warned her of the risks and rewards associated with her investment in the Company Stock Fund.

26. Taking into account the total mix of information available to Plaintiff, Defendants made no misrepresentations.

27. All information relevant to Plaintiff's claims was available to investors in the public domain.

28. Defendants did not make any affirmative representations that falsely portrayed Schering as being in full FDA compliance or as having no significant unresolved manufacturing issues.

29. Plaintiff and/or some or all of the members of the putative Class have no recoverable damages because the amount they paid for the Company Stock Fund is not greater than the value thereof at the time suit was bought, the price at which their shares of the Company

Stock Fund were disposed in the market before suit, or the price at which their shares of the Company Stock Fund were disposed of after the suit but before judgment.

30. The Complaint fails to plead fraud with particularity as required by Fed. R. Civ. P. 9(b).

31. The misrepresentations alleged in the Complaint fall within the safe-harbor provision for forward-looking statements under the Private Securities Litigation Reform Act of 1995.

32. The FDA's decision to refuse approval for Claritin in 2001 was not foreseeable, and in any event Schering never represented to investors when the FDA would grant that approval.

33. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations, ERISA Section 413, 29 U.S.C. § 1113, and/or by the equitable doctrine of laches.

34. Plaintiff may not avail herself of a *respondeat superior* theory of liability against any or all Defendants.

35. Plaintiff may not obtain damages for any claim or alleged harm for which she has already obtained legal redress.

36. Under ERISA Section 502(g)(1), 29 U.S.C. § 1132(g)(1), costs and attorneys' fees should be assessed against Plaintiff and awarded to Defendants.

Defendants reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserve the right to amend their Answer to assert any such defense.

/s/ Douglas S. Eakeley
Douglas S. Eakeley
Gavin J. Rooney
LOWENSTEIN SANDLER PC
65 Livingston Avenue
Roseland, New Jersey 07068
(973) 597-2500

Eric C. Bosset (*pro hac vice*)
Frederick G. Sandstrom (*pro hac vice*)
COVINGTON AND BURLING LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-5000

Attorneys for Defendants

Of Counsel:
Jonathan Wasserman, Esq.
Schering-Plough Corporation
2000 Galloping Hill Road
K-6-1, Mail Stop 1800
Kenilworth, NJ 07033